



**Town of Upton - DPW
1 Main Street/ Suite 13
Upton, MA 01568**

Agreement ID#: 17-3

RUBBER CHIP SEALING CONTRACT # 17-3

THIS AGREEMENT made this 25th day of May, 2016 by and between the Town of Upton, Massachusetts, hereinafter call the “Owner” and All States Asphalt, Inc., hereinafter called the “Contractor”.

WITNESSETH, that the Owner and the Contractor, for the consideration hereinafter named, agree as follows:

ARTICLE 1: THE CONTRACT SUM: The Owner shall pay the Contractor in current funds for the performance of the work as per the unit prices for actual work performed in the Bid dated April 26, 2016. The total cost of the Contract shall not exceed **Seventy Two Thousand, Eight Hundred and zero cents (\$72,800.00)** unless there is a written agreement (change order) of the parties.

ARTICLE 2: SCOPE OF WORK: The Contractor shall perform all the work or provide all the supplies, equipment, and materials as herein specified: As described in the Contract Documents for **Chip Sealing - Contract # 17-3**, dated **May 4, 2016**, Upton, Massachusetts.

ARTICLE 3: TIME OF PERFORMANCE: The Contractor shall commence work under this Contract upon notice and as required by the Owner. If the Contractor shall neglect, fail or refuse

to complete the work when called, or any proper extension granted by the Owner, then the Contractor shall pay to the Owner the following remedy: a fine in the amount of one hundred dollars (\$100) per day for each day that the Contractor fails to perform the services requested by the Owner.

ARTICLE 4: SCHEDULE OF PERFORMANCE: In accordance with the Scope of Work, the Contractor shall perform the work, or provide the supplies, equipment, or materials according to the following schedule:

ITEM / REPORT / TASK

TIME FOR COMPLETION

Contract #17-3 completion

120 days from the date of contract execution

ARTICLE 5: CONTRACT AMENDMENTS: All amendments, change orders or any changes to the provisions specified in this Contract can only occur when mutually agreed upon by the Owner and Contractor. Further, such amendments, change orders, or changes shall be in writing and signed by officials with authority to bind the awarding authority. Additionally, all amendments, change orders, and changes shall be approved by the Town Accountant prior to execution by the authority of the awarding authority. No amendment, change order or change to the Contract provisions shall be made until after the written execution of the amendment, change order, or change to the Contract by both parties. All amendments, change orders and changes to the Contract shall be in accordance with G.L. Chapter 30,39M.

ARTICLE 6: BONDING AND INSURANCE REQUIREMENTS: The Contractor shall furnish the following Bonds and Insurance Certificates as Contract security: All Insurances and

Bonds as required by the Owner in the Town of Upton, Massachusetts, Insurances and Bonds as required by the Owner in the Town of Upton, Massachusetts, contract documents for “**Rubber Chip Sealing, Contract # 17-3**”, dated **April 18, 2016**. These Insurances and Bonds are specified in: **Section 10- Bid Bond, Section 11 - Performance/Payment Bond and Section 13 - Insurance to be maintained by the Contractor and Indemnification of Town by Contractor.**

ARTICLE 7: PAYMENT TERMS: Payment by the Owner to the Contractor shall be as follows: Payment will be made to the Contractor within forty-five days (45) of the performance of services identified in the Purchase Description of the contract documents for “**Rubber Chip Sealing, Contract # 17-3**”, dated **May 4, 2016**. The Contractor must supply an invoice to the Town of services performed in order to begin the processing of payment to the Contractor. The Contractor will bill the Owner on the first of each month of the project. These invoices will be processed on a timely basis by the Owner upon certification of completion of the work. The Owner shall set aside 5% of each invoice billed by the Contractor as retainage. These funds will be returned to the Contractor within 60 days of successful completion of the project.

ARTICLE 8: CONTRACT DOCUMENTS: The following, together with this Agreement, form the Contract and all are as fully a part of the Contract as if attached to this Agreement or repeated herein:

1. This Agreement
2. Amendments, change orders, or other changes mutually agreed upon;

3. Town of Upton, Massachusetts, contract documents for **“Rubber Chip Sealing, Contract # 17-3”**, dated **May 4, 2016** including all addendum issued by the Town.
4. Completed Bid Proposal Forms;
5. Bid Bond;
6. Insurance Certificate;
7. State Tax Administration Emergency Regulation; and Collusion Forms
8. Performance Bond and Payment Bond
9. Conservation Order of Conditions

ARTICLE 9: CONTRACT TERMINATION: The Owner may suspend or terminate this Contract by providing the Contractor with ten (10) days written notice for reasons outlined as follows:

1. Failure of the Contractor, for any reason, to fulfill in a timely and proper manner its obligations under this Contract.
2. Violation of any of the provision of this Contract by the Contractor.
3. A determination by the Owner that the Contractor has engaged in fraud, waste, mismanagement, misuse of funds or criminal activity with any funds provided by this Contract.

ARTICLE 10: INDEMNIFICATION: The Contractor shall comply with the requirements of all applicable laws, rules, and regulations in connection with the services of the Contractor, and shall exonerate, indemnify and hold harmless the Owner as specified in Section 13.2, Indemnification. This shall not be construed as a limitation of the Contractor’s liability under the Contract or as otherwise provided by law.

ARTICLE 11: AVAILABILITY OF FUNDS: Compensation may be provided by the Commonwealth of Massachusetts, Department of Transportation, Chapter 90 funds, and is subject to any rules and regulations of the Commonwealth. When funds are not appropriated or otherwise made available or adequate for any other reason, the procurement officer shall reduce the scope of work or cancel this Contract. The Owner retains the right to adjust quantities more or less so as not to exceed allocated State funds.

ARTICLE 12: APPLICABLE LAWS, REGULATIONS: The Contractor agrees to comply with other applicable Federal/State/Local Laws, Regulations or Ordinances effecting the successful completion of this Contract. Such Laws, Regulations, or Ordinances include but are not limited to: Prevailing Wage Laws; Non-Discrimination Laws; all laws applicable to the Civil Rights Act; Section 3 of the Housing Rehabilitation Act of 1974; and Equal Opportunity Law. The Contractor shall procure and pay for all permits, licenses, and approvals; the Contractor shall comply with all applicable laws, ordinances, rules, regulations, and orders pertaining to the protection of work, property, persons and employees.

ARTICLE 13: ASSIGNMENT SUBJECT TO APPROVAL: No rights or liabilities under this Contract shall be assigned without the express written approval of the Owner.

ARTICLE 14: CONTRACTOR'S TAX COMPLIANCE: The Contractor certifies under the penalties of perjury that it has filed all state tax returns, paid all state taxes and is otherwise in

compliance with the laws of the Commonwealth of Massachusetts relating to taxes. The Upton Tax Exempt number is on file with the Town Accountant.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in four (3) original copies on the day and year first above written.

I certify that an appropriation is available in the amount of this contract.

Town Accountant

OWNER

CONTRACTOR

Blythe C. Robinson
Town Manager

Name of Contractor

Title

Address

TOWN OF UPTON, MASSACHUSETTS

DEPT OF PUBLIC WORKS

CONTRACT # 17-3

FOR

Rubber Chip Sealing

NOTICE TO PROCEED

TO: All States Asphalt, Inc.

DATE: 5/25/16

You are hereby notified to commence work in accordance with the Agreement dated May 25, 2016, on or before July 5, 2016, and you are to complete the work within 120 consecutive calendar days thereafter. The date of completion of all work is therefore October 31, 2016.

Owner: Town of Upton

By: _____

Title Town Manager_____

ACCEPTANCE OF NOTICE

Receipt of the above Notice to Proceed
is hereby acknowledged by:

this the _____ day of _____, 2016

By:_____

Title: _____